TESTIMONY OF ATTORNEY KATE W. HAAKONSEN

JUDICIARY COMMITTEE

11 MARCH 2015

OPPOSE COMMITTEE BILL 5505

AN ACT CONCERNING FAMILY COURT PROCEEDINGS.

Senator Coleman, Representative Tong, and Members of the Committee:

Thank you for the opportunity to address you today regarding 5505, which proposes a number of changes to family law statutes.

I have been a practicing lawyer for over 35 years. During all of that time I have handled divorce and other family law matters. In the last 20 years I have devoted most of my practice to family law. I am a past chairman of the Family Law Section of the CBA and a member of several other family law-related organizations. I have not served as a guardian ad litem for over 10 years although prior to that I did so occasionally.

I believe that the public policy of our State, and more importantly the Constitutional purpose of a separate Judicial Branch of government, is to allow judges to exercise the discretion granted to them to hear evidence and rule on the issues presented to them free of micro management by the other branches. There is nothing in Committee Bill 5505 which advances this public policy. On the contrary, the bill thwarts the ability of the court to hear evidence and make rulings on the best interests of children which will ultimately be to their detriment.

Section 1 of Committee Bill 5505 would restrict the court's ability to protect children in the context of divorce and custody related matters in superior court. Where the court might hear evidence suggesting that children could be at risk if left alone in the care of one of their parents, the court would be unable to order any supervision for any period of time unless DCF had already substantiated a finding of abuse or neglect, or the parent has no established relationship with the child, or has engaged in criminal conduct posing a risk to the child or suffers from a severe mental disability which presents a risk to the child. This list of four requirements doesn't begin to cover all of the very good reasons for a court to limit a child's exposure to a parent. For example, it does not address a parent's threat to take a child and leave the state or the country. Limiting lists of this kind can never cover all the possibilities. That is why we have judges, so they can weigh the evidence in each case and rule appropriately.

The first of these conditions, if enacted, could result in parents flocking to make complaints to DCF which would both burden an already burdened system and risk putting children through even more intrusive processes. It would also cause significant delays in family court proceedings and DCF investigations. This is another attempt to take discretion away from judges, people in whom we have vested authority to make decisions and exercise discretion, without any real evidence of a need to do so. This is a really bad idea.

Please consider that supervised visitation is rarely ordered as it is and it is usually temporary, to keep a child safe pending counseling or further investigation. There are very few supervisors other than family members and judges are well aware of this lack of resources. In addition, judges are generally loath to impose this kind of restriction on a parent in the absence of convincing evidence of risk to the child. But where a judge hears such evidence, isn't it better to err on the side of caution where a child's welfare is concerned? Would you want to read about even one child harmed, kidnapped or killed because the facts didn't fit one of the four conditions required in this bill and the court couldn't order supervision? This is another bad solution in search of a problem which doesn't really exist. The legislature would do well to respect the judges whose appointments it has approved and let them to their jobs.

Section 2 of Committee Bill 5505 would make it possible, perhaps even attractive, for unhappy parents to sue GALS and AMCs if they are "aggrieved." Where parents cannot agree on how to raise their children to the point where they need the court and a GAL to settle the matter for them, it is no surprise if at least one of them is unhappy with the result. And sadly, it is also common that the unhappy parent blames everyone but him or herself for that result taking no personal responsibility for the problem.

Not only could these aggrieved parties put professionals through defending a lawsuit every time a parent is unhappy with a recommendation, they could get fees and cost if they prevail. This section would overrule the holding of our Supreme Court in Carrubba v. Moskowitz, 274 Conn. 583 (2005). It would also make Connecticut law out of synch with many other states' laws. The bill has no definition of "aggrieved." Would any perceived violation of the GAL Code of Conduct support a civil suit? The effect of this provision, as the Supreme Court suggested in Carrubba, would be that no professional would be willing to serve as a GAL or AMC. The Family Relations Division of the court would become the only option for parents and the court when children are in need of a neutral representative. The resulting cost to the government, in addition to a serious detriment to children of warring parents, could be enormous.

Section 3 of Committee Bill 5505 would allow parents to select their own therapists and evaluators if a court believes they or their children are in need of treatment or evaluation.

Start with the fact that in most cases parents are already free to select their own therapists and their children's therapists if they agree. If the court is ordering that a particular therapist provide treatment, it would be because the parents can't agree or don't support therapy for themselves or their child. Courts are sensitive to trying to allow parents to select providers who are covered by their insurance if any are available. But in the absence of agreement or in certain circumstances, requiring the party make the selection could result in in appropriate or incompetent providers being used which would defeat the purpose of the treatment.

Where evaluation is concerned, the purpose of evaluations is to obtain reliable information to assist the parties and the court is determining what is in the best interests of the children. Again courts are usually willing to allow parties to choose the evaluator if they agree, and this does not need codification. But it is also important that these evaluations be done by trained, experienced and credible professionals who are not beholden to either party nor in fear of retribution from the parties for

rendering the opinions for which they are appointed. They cannot perform this task competently for a family if they have access to only part of the family. In addition to allowing multiple evaluators to be chosen for members of a family, this bill allows anyone who qualifies as a "licensed healthcare provider" to be selected. This could include pharmacists, dentists, chiropractors… In order to offer an opinion a witness must first be found to have expertise on the matter about which the opinion is offered. For parties to choose whoever they please to conduct evaluations without regard to actual qualifications would be a waste of everyone's time and the parties' money and put the children through needless intrusion and stress.

I know of no medical coverage for forensic work of the type addressed by this section. So medical coverage is not a factor in selecting an evaluator. Furthermore, while it might be beneficial for evaluations to be completed as soon as practicable, imposing a 30-day time limitation is unreasonable and could lead to parents gaming the system by dragging their feet and not making themselves or the children available in time. Given all the contacts which evaluators are often expected to have with parents, children, extended family, teachers, healthcare providers, daycare providers and others in addition to writing a cogent report and recommendations and maintaining their existing practices, 30 days is a completely unreasonable demand. Once again, this is a poorly veiled attempt to eliminate a resource by which a small minority of litigants feel aggrieved.

Section 4 of Committee Bill 5505 would essentially require that no medical evidence could be introduced in court unless the provider were present to testify.

This provision will result in much longer hearings and trials and much greater expense for the parents and the courts. Any parent who believes such testimony would be helpful can already subpoena any witnesses they want without any change in existing law. Allowing GALs to present information from doctors and others is an efficient way for the court to have information which can help it decide issues the parties can't decide because they do not agree. Requiring that medical providers always appear to testify will create an unnecessary burden on the providers, the parties and the courts. This will simply present an additional burden on the system and on forensic evaluators which will become a disincentive to providing services to families with children in need of protection.

For all of these reasons, I urge you not to support Committee Bill 5505.